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Total Number of Pages in This Submission	4

Application Number	10/707148
Filing Date	11-24-2003
First Named Inventor	CHABOT
Art Unit	3761
Examiner Name	GARCIA
Attorney Docket Number	6536-0301

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
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- ☑ Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☐ Other Enclosure(s) (please Identify below):

Remarks

Please be advised that the pending application has had a Petition to Make Special granted on November 3, 2005. Applicant respectfully requests the Board to handle this appeal on a special basis.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Chabot & Associates		
Signature	Ralph D Chabot		
Printed name	Ralph D. Chabot		
Date	01-31-2006	Reg. No.	39,133

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Signature	Ralph D Chabot		
Typed or printed name	Ralph D. Chabot	Date	01-31-2006

Attorney Docket No: 6536-0301

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Chabot	
Serial No:	10/707148	Art Unit: 3679
Filed:	November 24, 2003	Examiner: Ernesto Garcia

For: Method for Limiting the Movement of an Infant in a Particular Direction

REPLY BRIEF

This paper is in response to the Examiner's Answer mailed January 11, 2006.

Introduction

A petition to make special was filed for the application on appeal. A decision granting the petition was made November 3, 2005. Applicant respectively asks the Board to handle this appeal on a special basis.

Applicant's reply to the examiner's two grounds of rejection are presented below.

1. Rejections based on Section 112, 2nd paragraph

As in the prosecution stage, the examiner's answer continues to rely on his unsupported opinion rather than objective reasoning and legal precedent. Applicant's arguments, supported by case law were not addressed.

On page 6 of the examiner's answer, the examiner restates his rejection based on section 112, 2nd paragraph that there is no standardized depth which prevents an infant from attempting to cross while still allowing older children and adults to step across. The examiner completely fails to address appellant's argument that: a) breadth is not indefiniteness, *In re Robins*, 166 USPQ 552 (CCPA 1970); and, b) that the pending claims must be given the broadest reasonable interpretation consistent with the specification. MPEP§2173.05(a).

For the reasons cited in the Amended Appeal Brief, the Board is respectfully asked to withdraw the examiner's rejection for pending claims 6, 9 and 10.

2. Rejections based on Section 102

On page 7 of the examiner's answer, he dismisses the relevance of the *Ex parte Pfeiffer* case stating that it was not relied upon to reject the claims. This is a bewildering position, given that it was the examiner himself who cited the case in response to Applicant's inquiry to the legal basis for rejection. (See Paragraph B, Page 2, "Advisory Action Before the Filing of an Appeal Brief" mailed 05/26/2005).

The examiner clings to the proposition that steps rather than structure serve to define method claims. Even if true, the steps presented are different. For example, claim 2 includes the step of "positioning said sheeting material to prevent movement of the infant from one area of a house to another". The Marshall reference does not speak to preventing movement of an infant and does not describe a use for inside a house. Anticipation requires identity of invention. The claimed invention, as described in the claims, must be the same as that of the reference in order to anticipate. *Glaverbel Societe Anonume v. Northlake Marketing & Supply Inc.*, 45 F.3d 1550, 33 USPQ 2d 1496, 1498 (Fed. Cir. 1995). Clearly, the Marshall reference does not anticipate the claims on appeal.

The examiner also states in page 7 that the pending specification states the invention could as well be used with dogs (citing paragraph 004), concluding this is clear evidence the method described in the Marshall prior art reference equally applies to the claimed invention. The examiner's statement is respectfully misleading.

The pertinent part of Paragraph 004 reads: "My method can also be used for small domesticated pets *such as small dogs*". (Emphasis added). Use of the term "small dogs" should be interpreted to mean that it excludes large dogs. Applicant's attorney is unaware of an instance and thus does not believe that small dogs such as Yorkshire terriers and Chihuahuas even possess the leverage necessary to knock over the garbage can presented in Marshall. Therefore, if small dogs do not possess the physical characteristics to knock over a garbage can, then Marshall's invention does not relate to

small dogs. Nevertheless, the examiner's argument is irrelevant since the claims pending on appeal are directed to limiting the movement of an infant in a particular direction and do not claim a method to prevent movement of dogs.

Accordingly, since the Marshall reference does not include all the limitations of the pending claims, the rejection based on anticipation is incorrect.

The Board is respectfully asked to withdraw the examiner's rejection for pending claims 2-10.

Respectfully submitted,

Dated: January 31, 2006

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